

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Atty. Docket: MAOR=2

In re Application of:)	Conf. No.: 8228
)	
Zeev MAOR)	Art Unit: 1617
)	
Appln. No.: 09/582,522)	Examiner: G. C. Yu
)	
Filed: August 24, 2000)	Washington, D.C.
)	
For: A GEL COMPOSITION FOR)	July 24, 2008
SKIN CARE AND PROTECTION)	
AND A METHOD FOR...)	

COMMUNICATION

Honorable Commissioner for Patents
U.S. Patent and Trademark Office
Randolph Building, Mail Stop Amendments
401 Dulany Street
Alexandria, VA 22314

Sir:

The present communication is intended to supplement applicant's amendment of January 8, 2007. Following the submission of the amendment of January 8, 2007, applicants received an advisory action dated February 6, 2007, refusing to enter the amendment for the purpose of appeal. In the advisory action, the examiner stated that she interpreted applicant's declaration of July 6, 2004, as stating that the problem of precipitation was due to the addition of hydrophobic agent to Dead Sea water. The

examiner did not accept applicant's assertions of unexpected results.

On February 9, 2007, a request for continued examination (RCE) was filed along with a petition for suspension of action for a period of three months and a request that the amendment of January 8, 2007, be entered and considered. Also filed on February 9, 2007, was a petition to revive. The petition to revive was granted on December 14, 2007. No further action has been received with respect to this case.

Attached hereto is a new declaration of Prof. Magdassi entitled "Declaration #4 under 37 CFR §1.132 of Shlomo Magdassi." It is respectfully requested that this declaration be considered at the time that the examiner considers the merits of applicant's amendment of January 8, 2007, which must now be considered in light of the RCE of February 9, 2007. It should be noted that, while the present communication does not fall within any of the categories for entry as a matter of right as set fourth in 37 CFR §1.111(a)(2), nevertheless, the examiner always has discretion to enter a supplemental response. See the response to comment 95 in the rule-making accompanying the promulgation of this section of 37 CFR §1.111 at 65 FR 56517 (September 21, 2004).

The new declaration attempts to clarify the factual record by summarizing, in spreadsheet form, the results from all of the Magdassi declarations of record, as well as the results of this fourth declaration, and discussing the significance of the cumulated results.

The declaration first establishes that Prof. Magdassi did not intend to convey to the examiner that the problem of precipitation was due to the addition of hydrophobic agent to Dead Sea water. Rather, the problem is how to get a clear gel using the extremely high salt concentrations of Dead Sea water even without hydrophobic agent and also how to do so when the problem is exacerbated by the further addition of hydrophobic agent. The problem of how to get a clear gel using the extremely high salt concentration of Dead Sea water is not solved by any reading of Flick.

As to the examiner's statement that it is well known that nonionic solubilizers have been used for the purpose of making clear gels that contain lipophilic active agents, Prof. Magdassi has conducted experimentation showing that when using normal sea water the gel is clear whether a cationic surfactant is used or a nonionic surfactant. Thus, the problem simply does not arise when using normal sea water. The fact that Flick discloses that a formulation

with a hydrophobic agent in a nonionic solubilizer is clear does not teach those of ordinary skill in the art that the same formulation with an ionic solubilizer would not have been clear. Prof. Magdassi opines that his comparative experiments support the opinion that this is not a conclusion that can reasonably be drawn from Flick.

With respect to the Malençon reference, Prof. Madassi attempted to repeat Malençon's experimentation, but found that it was impossible to obtain a clear gel when sodium alginate is used, as sodium alginate will always cause precipitation of sea water as well as Dead Sea water. Prof. Magdassi points out that this finding is not necessarily contradictory to the results of Malençon as Malençon states that the product is "practically colorless." The word "colorless" does not necessarily mean that it is transparent or clear, it means only that it has no color. It could still be turbid. The gels of the present invention are clear.

Even when a gelling agent that does not cause precipitation of the sea water (0.4% hydroxyethyl cellulose) is substituted for the alginate of Malençon, the comparative experimentation establishes that there was no problem in getting a clear solution of sea water with cationic surfactant. On the other hand, one always obtained only a

semi-transparent solution at 30% Dead Sea water and turbid solutions using 50% and 80% Dead Sea water. Even when a hydrophobic agent is added to the sea water and cationic surfactant, the solution remains clear. However, the same experiment with 50% or 75% Dead Sea water yields a turbid solution. On the other hand, when a nonionic surfactant is substituted for the cationic surfactant in the Dead Sea water experiment, the gel is clear.

Accordingly, from the results reported in Prof. Magdassi's declarations, it must be concluded that the references of record would not make it obvious to one of ordinary skill in the art that the problem of avoiding turbidity when forming a gel with Dead Sea water, with or without the presence of hydrophobic agent, could be solved by the use of nonionic surfactant. Accordingly, consideration of the present communication and fourth declaration of Prof. Magdassi in conjunction with applicant's amendment of January 7, 2007, and reconsideration and withdrawal of the rejections of record for the reasons presented in the amendment of January 7, 2007, and as supplemented herein are earnestly solicited.

Please take note that the figures attached to the accompanying declaration are meant to be viewed in color. It is understood that the color is converted to black and

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white when a document is filed by electronic web-filing. The document is being filed by web-filing to expedite getting it to the attention of the examiner. However, a duplicate is being filed by hand on even date herewith so that the color attachments will also be available to the examiner.

Respectfully submitted,

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